

**APPENDIX D**

The undersigned, MARIE DESYLVA, wife of B. G. DESYLVA, hereby acknowledges that she has read the agreement dated September 26th, 1946, made by B. G. DESYLVA with MUSIC PUBLISHERS HOLDING CORPORATION, and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, to the undersigned in hand duly paid, at or before the ensealing and delivery of these presents, receipt of which is hereby duly acknowledged, the undersigned hereby agrees to be bound by the same, and in the event she should become entitled to secure renewal of the copyright in any of the musical numbers embraced by said agreement, she agrees that all such renewals of copyright shall come under said agreement, and said agreement shall be extended to and deemed to include said renewals of copyright. She agrees to execute, acknowledge and deliver, from time to time, such assignments or other instruments that may be necessary, expedient, and proper to carry out and effectuate the foregoing, and the undersigned does hereby irrevocably appoint MUSIC PUBLISHERS HOLDING CORPORATION and its successors or assigns, or any of its agents, servants, officers and employees or any of them, or the appointee or designee of any of them, her true and lawful attorney for her and in her place and stead to procure and obtain renewals of copyrights of the musical compositions referred to and covered by the said agreement, and to execute and deliver in her name, formal assignments to the Corporation, its successors and assigns, of such renewals of copyright and each of them, subject to the provisions of the said agreement.

DATED:

MARIE DESYLVA (L. S.)  
Marie DeSylva

IN PRESENCE OF:

A. L. BERMAN

State of California,  
County of Los Angeles—ss.:

On this 26th day of September 1946, before me personally came MARIE DESYLVA, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

BEATRICE KAYE

Notary Public,

In and for the State of California

County of Los Angeles

My Commission Expires June 26, 1950

(Seal)

A

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA

THE LIBRARY OF CONGRESS—Washington

This is to certify that the attached instrument was recorded in the assignment records of the Copyright Office, vol. 617, pages 202-203 on January 7, 1947.

In testimony whereof, the seal of this Office is affixed hereto.

SAM B. WARNER

Register of Copyrights

(Seal)

Librarian of Congress

Copyright Office

United States of America

AGREEMENT made this 26th day of September, 1946, by and between B. G. DESYLVA, (also known as "BUD DESYLVA and GEORGE GARD DESYLVA"), hereinafter designated "Author", and MUSIC PUBLISHERS HOLDING CORPORATION, a Delaware corporation, hereinafter designated the "Corporation",

WITNESSETH:

WHEREAS the Author has composed and written, in whole or in part, the music and/or lyrics of various musical compositions first published and copyrighted during the year 1918 and/or any years subsequent thereto down to the date hereof, the title of which, among others, are mentioned in Schedule "A" hereto annexed. All numbers written and composed in whole or in part by the Author and published by M. Witmark & Sons, Remick Music Corporation or Harms, Inc., during said period are intended to be covered hereby, whether or not listed on said schedule, and

WHEREAS the Author represents and warrants that he has not heretofore sold, assigned, transferred or otherwise disposed of, or pledged, hypothecated or otherwise encumbered the renewal copyrights of the musical compositions listed in Schedule A, or any other numbers not listed therein but covered hereby, or any interest therein or thereto or any of them, other than such agreements as the Author may have heretofore entered into with the Corporation, or its subsidiaries, and with the American Society of Composers, Authors and Publishers, and

WHEREAS the Corporation desires to contract with the Author for his interest in the renewal rights of the compositions mentioned in Schedule A,

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration by each of the parties hereto to the other in hand paid at or before the en sealing and delivery of these presents, receipt of which is hereby acknowledged, it is agreed:

I. The Author, subject to the terms, conditions and reservations hereinafter set forth, hereby sells, assigns, transfers and sets over unto the Corporation and its successors and assigns, the renewal copyrights of the musical compositions set forth in Schedule A, hereto annexed, and all his right, title and interest, vested and contingent, therein and thereto, subject to the payment of the royalties hereinafter provided for, and the Author does hereby authorize and empower the Corporation to renew pursuant to law, for and in his name, if living, the copyrights of the musical compositions set forth in Schedule A, and the Author hereby constitutes and appoints the Corporation and its successors or assigns, and their agents, officers, servants and employees, or any of them, or the appointee or designee of them or any of them, his agent and attorney in fact to renew pursuant to law for and in his name, if living, the copyrights of the said musical compositions and each of them mentioned in Schedule A, and to execute and deliver in his name and on his behalf a formal instrument or instruments assigning to the Corporation and its successors, assigns or designees, the renewal copyrights of the said musical compositions and each of them, subject to the terms and conditions hereinafter contained. If the Copyright Law of the United States, now in force shall be changed or amended so as to provide for an extended or longer term of copyright, then the Author hereby sells, assigns, transfers and sets over unto the Corporation and its successors, assigns or designees, all his right, title and interest in and to the musical compositions covered by this agreement for such extended or longer term of copyright.



II. The Corporation agrees to pay or cause to be paid, commencing with the beginning of the first quarter after the execution and delivery hereof, the following royalties upon all compositions covered hereby, published and sold by and paid for to the Publisher in the United States of America and Canada.

(a) Popular numbers:

Regular pianoforte copies—Three Cents (3¢) per copy.

(b) Numbers written for and used in motion picture productions, regular pianoforte copies—Four Cents (4¢) per copy.

(c) Numbers written for and used in living stage productions, regular pianoforte copies—Six Cents (6¢) per copy.

(d) Orchestrations—Three Cents (3¢) per copy.

(e) All other editions than those herein specifically provided for—Ten percent (10%) of the wholesale price.

(f) Twelve Dollars and Fifty Cents (\$12.50) as and when any of the said compositions is published in any folio or composite work, regardless of the number of copies published.

(g) Folios and/or composite works, as referred to in the next preceding subdivision hereof, shall be deemed to include any publication of a collection of at least five (5) or more works, musical compositions or separate lyrics, contained within the same volume and/or binding.

(h) No royalties shall be payable for professional material not sold or resold.

(i) An amount equal to Fifty percent (50%) of all receipts of the Corporation, in respect to any licenses issued authorizing the manufacture of parts

of instruments serving to reproduce the said compositions, to use the said compositions in synchronization with sound motion pictures, or to reproduce them upon so-called "electrical transcriptions" for broadcasting purposes in the United States and Canada, and any and all receipts of the Corporation from any similar source of right now known or which may hereafter come into existence in the United States and Canada.

- (j) The Author shall not be entitled to any share of the moneys distributed to the Corporation by the American Society of Composers, Authors and Publishers, or by or through any other performing rights society or agency throughout the world, if writers receive through the same source an amount which, in the aggregate, is at least equal to the aggregate amount distributed to the Corporation. If, however, the small performance rights shall be administered directly by the Corporation, then the Corporation shall pay an amount equal to fifty percent (50%) of all net sums received by the Corporation therefrom.

The Corporation also agrees to pay or cause to be paid commencing with the beginning of the first quarter after the execution and delivery hereof, for and during the term of the respective copyrights thereof in all countries outside of the United States and Canada, Fifty percent (50%) of all receipts from sales and uses (subject to the deduction of foreign income taxes, if any).

Where, however, numbers are printed in Canada by a distributor, licensee or representative of the Corporation, all copies of such numbers so printed and sold in Canada may, at the option of the Corporation, be treated by the Corporation as foreign sales and the rates of royalty and provision applicable to countries outside of the United States and Canada may apply.

The said royalties shall be paid upon each and all of

the entire compositions (lyrics and music), and if the Author shall not be the Author of the entire composition (lyrics and music), then such royalties shall be divided one-half to the authors and one-half to the composers of each separate number, unless otherwise agreed upon by the writers.

Payment of all royalties accruing to the Author shall be made to the Author, while living, then to such person or persons as shall be lawfully entitled thereto.

III. The Author hereby confirms the fact that prior to the date of this agreement, M. Witmark & Sons, Remick Music Corporation and Harms, Inc., were and now are possessed of, and entitled to the original copyright of songs mentioned in said Schedule A, (except the numbers of HUMPTY DUMPTY—TAKE A CHANCE), and of each and every right thereunder, except living stage performing rights of numbers written for dramatico-musical works, and except such rights as may be vested in the American Society of Composers, Authors and Publishers, and that the Author duly assigned to M. Witmark & Sons, Remick Music Corporation or Harms, Inc., or to their respective predecessors in interest, prior to its securing the copyright thereof, said songs mentioned in Schedule A, (except the numbers of HUMPTY DUMPTY—TAKE A CHANCE) and any other numbers not listed therein but covered hereby, and all his right, title and interest therein and thereto, except living stage performing rights of numbers written for dramatico-musical works, and except such rights as may be vested in the American Society of Composers, Authors and Publishers.

IV. The Author agrees that his wife, Marie DeSylva, shall execute a separate instrument in the form hereto annexed, marked B, and made part hereof.

V. This agreement shall be binding upon and shall inure to the benefit of the Author and his heirs, executors,

administrators and assigns, and the Corporation and its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

B. G. DeSYLVA (L.S.)

B. G. DeSylva

MUSIC PUBLISHERS HOLDING CORPORATION

By: HERMAN STARR

State of California,

County of Los Angeles—ss:

On this 26 day of September 1946, before me personally came B. G. DeSYLVA, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

BEATRICE KAYE

Notary Public,

In and for the State of California,

County of Los Angeles

My Commission Expires June 26, 1950

(Seal)

## SCHEDULE A

## B. G. DESYLVA COMPOSITIONS

Published by:—M. WITMARK & SONS  
 REMICK MUSIC CORPORATION  
 HARMS, INC.

YEAR	TITLE	CO.	CO-WRITER(S)
1918	Angel Child	(R)	Louis Silvers
	Ev'ry Morning She Makes Me Late	(R)	Kahn & Jolson
	Give A Little Credit To The Navy	(R)	Gumble & Kahn
	She Was Not So Bad For A Country Girl	(R)	
	Tackin' 'Em Down	(R)	Albert Gumble
	I'll Say She Does	(R)	Kahn & Jolson
	'N Everything	(R)	Kahn & Jolson
	from <i>Sinbad</i>		
	But After The Ball Was Over	(R)	Arthur J. Jackson
	If She Means What I Think She Means	(R)	Arthur J. Jackson
	from <i>Ziegfeld Follies 1918</i>		
1919	All That I Need To Know Is That		
	You Come From Dixie	(R)	Gumble & Jackson
	Moonlight On The Nile	(R)	Lenzberg & Kahn
	Oh, Agnes	(R)	Arthur J. Jackson
	Oh You Delicious Little Devil	(R)	Alfred Bryan
	That Lullaby Of Long Ago	(R)	Whiting, Kahn & Egan
	You Ain't Heard Nothing Yet	(R)	Jolson & Kahn
	Best Of Everything, The	(H)	G. Gershwin & A. Jackson
	From Now On	(H)	G. Gershwin & A. Jackson
	Love Of A Wife, The	(H)	G. Gershwin & A. Jackson
	Nobody But You	(H)	G. Gershwin & A. Jackson
	Somehow It Seldom Seems True	(H)	G. Gershwin & A. Jackson
	Tee-Oodle-Um-Bum-Bo	(H)	G. Gershwin & A. Jackson
	from <i>La, La Lucille</i>		
	By The Honeysuckle Vine	(H)	Al Jolson
	Chloe	(H)	Al Jolson
	I Gave Her That	(H)	Al Jolson
	They Can't Fool Me	(H)	Al Jolson
	from <i>Sinbad</i>		
	I'm The Boy And I'm The Girl		
	from <i>Good Morning, Judge</i>	(R)	Louis Silvers



YEAR	TITLE	CO.	CO-WRITER(S)
1920	Avalon	(R)	Jolson & V. Rose
	In An Oriental Garden	(R)	Goldstein & Kahn
	Lamphouse Nights	(H)	G. Gershwin & Mears
	Love Flower	(H)	Silvers & Caesar
	Poppyland	(H)	G. Gershwin & Mears
	Settling Down	(H)	
	Sunny May Afternoon	(H)	
	While The City Sleeps	(H)	
	You're All That I Need	(H)	
	from <i>I'll Say She Does</i>		
	Just Snap Your Fingers At Care	(H)	
	from <i>Greenwich Village Follies</i>		
1921	Dixie Rose	(H)	G. Gershwin & Caesar
	I Call You Sunshine	(H)	Silvers & Caesar
	Some Day You'll Find Your		
	Dream Street	(R)	Louis Silvers
	Sunshine	(H)	Silvers & Caesar
	Swanee Rose	(H)	G. Gershwin & Caesar
	Tomale (I'm Hot For You)	(H)	G. Gershwin
	Yoo Hoo	(R)	Al Jolson
	Rosemary	(H)	Dave Stamper
	What A World This Would Be		
	from <i>Ziegfeld Follies of 1921</i>	(H)	Dave Stamper
	April Showers	(H)	Louis Silvers
	Don't Send Your Wife To The		
	Country	(H)	Atteridge & Conrad
	Down South	(H)	Walter Donaldson
	Give Me My Mammy	(H)	Walter Donaldson
	Tallahassee	(H)	Luckieth Roberts
	from <i>Bombo</i>		
	My Log Cabin Home	(H)	G. Gershwin & Caesar
	from <i>The Perfect Fool</i>		
1922	Don't Leave Me Mammy	(R)	Conrad, Santly, B. Da
	Dream On	(H)	Victor Herbert
	Flapper, The	(H)	George Gershwin
	It's Up To You	(H)	Maurice Yvain
	Silver Canoe, A	(H)	Vincent Rose
	Yankee Doodle Blues, The	(H)	G. Gershwin & Caesar
	Al Jolson's Coo Coo Song	(H)	Al Jolson
	from <i>Bombo</i>		
	Across The Sea	(H)	G. Gershwin & Goetz
	Argentina	(H)	G. Gershwin

## YEAR TITLE

## CO. CO-WRITER(S)

Cinderelatives	(H) George Gershwin
I Found A Four Leaf Clover	(H) George Gershwin
I'll Build A Stairway To Paradise	(H) G. Gershwin & A. Francis
She Hangs Out In Our Alley	(H) G. Gershwin & Goetz
Where Is The Man Of My Dreams from <i>George White's Scandals</i>	(H) George Gershwin
Do It Again from <i>The French Doll</i>	(H) George Gershwin
Dream Of Orange Blossoms	• (H) Victor Herbert
In Hennequeville	• (H) Victor Herbert
Kiss In The Dark, A	• (H) Victor Herbert
Legend Of The Glow Worm	• (H) Victor Herbert
Lonely Nest, The	• (H) Victor Herbert
Then Comes The Dawning	• (H) Victor Herbert
This Time It's Love	• (H) Victor Herbert
Way Out West In Jersey from <i>Orange Blossoms</i>	• (H) Victor Herbert • Assigned to M. Witmark & Sons
Forbidden Fruit	(H) Emmerich Kalman
In The Starlight	(H) Emmerich Kalman
I Still Can Dream	(H) Emmerich Kalman
My Bajadere	(H) Emmerich Kalman
Roses, Lovely Roses	(H) Emmerich Kalman
Waltz Is Made For Love, The from <i>The Yankee Princess</i>	(H) Emmerich Kalman
1923 Bundle Of Love, A	(H) Al Jolson
Don't Cry Swanee	(H) Al Jolson & Conrad
Morning Will Come from <i>Bombo</i>	(H) Jolson & Conrad
I Won't Say I Will But I Won't Say I Won't from <i>Little Miss Bluebeard</i>	(H) G. Gershwin & A. Francis
At Half Past Seven	(H) George Gershwin
Fabric Of Dreams from <i>The Nifties</i>	(H) Hubbell & A. Francis
Jijibo, The	(H) George Gershwin
Mah Jongg	(H) George Gershwin
Pepita	(H) George Gershwin
Someone Believes In You	(H) George Gershwin
Under A One Man Top	(H) George Gershwin
Virginia, Don't Go Too Far from <i>A Perfect Lady</i>	(H) George Gershwin

YEAR	TITLE	CO.	CO-WRITER(S)
923	Let's Be Lonesome Together	(H)	G. Gershwin & Goetz
	Life Of A Rose, The	(H)	George Gershwin
	Lo-La-Lo	(H)	George Gershwin
	On The Beach At How've-You-Been	(H)	George Gershwin
	There Is Nothing Too Good For You	(H)	G. Gershwin & Goetz
	Throw Her In High	(H)	G. Gershwin & Goetz
	Where Is She?	(H)	George Gershwin
	You And I (In Old Versailles) from <i>George White's Scandals</i>	(H)	G. Gershwin & J. Green
924	California, Here I Come	(W)	Jolson & J. Meyer
	Memory Lane	(H)	L. Spier & Conrad
	Must It Be Goodbye	(H)	Joseph Meyer
	Step Henrietta	(R)	Joseph Meyer
	Was It A Dream	(H)	Larry Spier
	As Long As I've Got My Mammy	(H)	J. Meyer & Hanley
	Born And Bred In Old Kentucky	(H)	J. Meyer & Hanley
	Hello Tucky	(H)	J. Meyer & Hanley
	Keep Smiling At Trouble from <i>Big Boy</i>	(H)	Gensler & Jolson
	I Don't Want A Girlie from <i>No, No, Nanette</i>	(H)	Vincent Youmans
	Best of Everything from <i>Stop Flirting</i> (London Revue)	(H)	G. Gershwin & A. Jackson
	Hey! Hey! Let 'Er Go from <i>Sweet Little Devil</i>	(H)	George Gershwin
	I Need A Garden	(H)	George Gershwin
	Kongó Kate	(H)	George Gershwin
	Night Time In Araby	(H)	George Gershwin
	Rose Of Madrid	(H)	George Gershwin
	Somebody Love's Me	(H)	George Gershwin
	Tune In (To Station J.O.Y.)	(H)	George Gershwin
	Year After Year from <i>George White's Scandals</i>	(H)	George Gershwin
925	I'm Goin' Out If Lizzie Comes In	(R)	Henderson & Brown
	Just A Cottage Small (By A Waterfall)	(H)	James F. Hanley
	Mother Me, Tennessee	(R)	Phil Charig
	Night Of Love, A	(H)	Larry Spier
	Outdoor Life	(W)	Jolson & J. Meyer
	Twilight (Dreaming Of You)	(H)	H. Alpert & N. E. Riter
	Whoopie	(H)	Conrad & Lew Brown
	Dance From Down Yonder	(H)	J. Meyer & Hanley

## YEAR TITLE

## CO. CO-WRITER(S)

1925 Backwaingia	(H) J. Meyer & Hanley
Miami	(H) Jolson & Conrad
Nobody But Fanny	(H) Jolson & Conrad
Who Was Chasing Paul Revere from <i>Big Boy</i>	(H) J. Meyer & Hanley
Ain't Love Wonderful	(H) Stephen Jones
Fond Of You	(H) Lewis E. Gensler
I Do	(H) Lewis E. Gensler
Kiki	(H) Lewis E. Gensler
Only One For Me	(H) Lewis E. Gensler
Sea Legs	(H) Lewis E. Gensler
You Must Come Over Blues from <i>Captain Jinks</i>	(H) Lewis E. Gensler
Sugar Plum from <i>Gay Parce</i>	(H) Joseph E. Meyer
Baby	(H) G. & Ira Gershwin
Kickin' The Clouds Away	(H) G. & Ira Gershwin
My Fair Lady	(H) G. & Ira Gershwin
Three Times A Day	(H) G. & Ira Gershwin
Tell Me More	(H) G. & Ira Gershwin
Why Do I Love You from <i>My Fair Lady</i>	(H) G. & Ira Gershwin
Beware Of A Girl With A Fan	(H) Henderson & Brown
Fly Butterfly	(H) Ray Henderson
Give Us The Charleston	(H) Ray Henderson
I Want A Lovable Baby	(H) Ray Henderson
Rose Time	(H) Henderson & Brown
What A World This Would Be	(H) Ray Henderson
Whois-Whatsis, The from <i>George White's Scandals</i>	(H) Henderson & Brown
1926 At The Foot Of The Hill Of Dreams	(H) James F. Hanley
Here I Am	(R) Henderson & L. Brown
Promise In Your Eyes	(H) James F. Hanley
When Day Is Done	(H) Robert Katzcher
Beautiful Baby	(H) James F. Hanley
Cross Your Heart	(H) Lewis E. Gensler
Don't Forget	(H) James F. Hanley
Everything Will Happen For The Best	(H) Lewis E. Gensler
Gentlemen Prefer Blondes	(H) Lewis E. Gensler
It Pays To Advertise	(H) Lewis E. Gensler
Oh What A Lovely Day	(H) Lewis E. Gensler
Weaker Sex, The	(H) Lewis E. Gensler
Who'll Mend A Broken Heart	(H) Lewis E. Gensler

## YEAR TITLE

## CO. CO-WRITER(S)

1926 You'll Never Know from <i>Queen High</i>	(H) Lewis, E. Gensler
Birth Of The Blues, The	(H) Brown & Henderson
Black Bottom	(H) Brown & Henderson
Girl Is You And The Boy Is Me, The	(H) Brown & Henderson
Lucky Day	(H) Brown & Henderson
Sevilla	(H) Brown & Henderson
Tweet Tweet from <i>George White's Scandals</i>	(H) Brown & Henderson
1927 Just A Memory	(H) Brown & Henderson
Broadway	(H) Brown & Henderson
Five Step, The	(H) Brown & Henderson
Home Again	(H) Brown & Henderson
I'd Like You To Love Me	(H) Brown & Henderson
It Won't Be Long Now	(H) Brown & Henderson
Just A Cozy Hide Away	(H) Brown & Henderson
Manhattan Mary	(H) Brown & Henderson
My Blue Bird's Home Again	(H) Brown & Henderson
Nothing But Love from <i>Manhattan Mary</i>	(H) Brown & Henderson
1932 Eadie Was A Lady	(H) Whiting & Nacio
Humpty Dumpty	(H) Whiting & Nacio
I'm Way Ahead Of The Game	(H) Whiting & Nacio
I Want To Be With You	(H) Vincent Youmans
My Lover	(H) Vincent Youmans
Night	(H) Whiting & Nacio
Oh How I Long To Belong To You	(H) Vincent Youmans
Rise 'N Shine	(H) Vincent Youmans
Should I Be Sweet	(H) Vincent Youmans
So Do I	(H) Vincent Youmans
Turn Out The Light	(H) Whiting & Nacio
You're An Old Smoothie from <i>Take a Chance</i>	(H) Whiting & Nacio



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COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA  
THE LIBRARY OF CONGRESS—Washington

This is to certify that the attached instrument was  
recorded in the assignment records of the Copyright  
Office, vol. 617, pages 204-215 on January 7, 1947.

In testimony whereof, the seal of this Office is affixed  
hereto.

SAM B. WARNER  
Register of Copyrights

(Seal)

Librarian of Congress  
Copyright Office  
United States of America

E-1

**APPENDIX E**

ROYALTY CONTRACT—SECOND TERM OF COPYRIGHT

SHAPIRO, BERNSTEIN & CO. INC.

1270 Sixth Avenue  
New York 20, N. Y.

AGREEMENT made March , 1947, between B. G. DESYLVA 444 North Faring Road, Holmby Hills, West Los Angeles, California hereinafter designated "GRANTOR", and SHAPIRO, BERNSTEIN & Co. Inc., a New York Corporation, hereinafter designated the "COMPANY".

WITNESSETH

WHEREAS, B. G. DESYLVA hereinafter designated "WRITER", originated and composed the music and/or words of a certain musical composition(s) entitled: "IF YOU KNEW SUSIE", ALABAMA BOUND", and all other songs listed on the reverse hereof which were published, and the claim(s) of the copyright of such composition(s) for the United States for the first and original term was/were registered in the Office of the Register of Copyrights by SHAPIRO, BERNSTEIN & Co. Inc., and/or SKIDMORE MUSIC Co. Inc., by such of the said publishers who or which first copyrighted the same, and,

WHEREAS, the GRANTOR desires to assign to the COMPANY the copyright to said musical composition(s) for the term of its/their renewal which will/has/have accrue(d) to and become vested in the GRANTOR by virtue of the existing copyright law of the United States.

NOW, THEREFORE, in consideration of the sum of \$2205.44 (bonus), paid on the execution hereof by the COMPANY to the GRANTOR, and for other valuable considerations, the receipt whereof is hereby acknowledged by the GRANTOR, it is agreed:—

1. The GRANTOR represents and warrants unto the Com-

PANY and its successors and assigns that the WRITER was the author and/or composer of the words and/or music, either alone or together with others, of the above musical composition(s) copyrighted as above; that the same (was) (were) published; that the GRANTOR has not in any manner transferred or encumbered in whole or in part said copyright(s) for the renewal and extended term, or the right to obtain the same, or to secure registration thereof; that no agreement or other grant exists inconsistent with the assignment and transfer hereunder, or which will or may prevent the GRANTOR from making this agreement and the assignment and transfer hereunder, or interfere with the COMPANY acquiring said copyright(s) and all of the rights herein provided.

(a) The GRANTOR represents and warrants to the COMPANY that he/she/they is/are the person(s) entitled by law to the renewal(s) herein specified.

II. The GRANTOR hereby sells, conveys and transfers unto the COMPANY, without reservation, exclusively and absolutely, all of his/her/their right, title and interest in and to said musical composition(s), and the title(s) thereto, including, but not limited to the right to change, alter and/or modify the lyrics, music and/or title(s) of such composition(s) and the full unlimited and unrestricted right to dramatize such composition(s) and make literary use thereof, or c. the material therein, in any form(s), together with the copyright thereto for the renewed and extended term, the right to secure registration thereof in the name of the GRANTOR as may be permitted under the existing copyright law, or in the name of the COMPANY, if deemed advisable by it, and all rights, whether now known or hereafter to become known, which the GRANTOR has or to which he/she/they may become entitled for and throughout the entire term for which the copyright(s) may be renewed or extended under the existing copyright law of the United States, and by present and future amendments thereto, or under any law or statute hereinafter enacted.

in substitution for the existing statute or of like import and effect; and also all copyrights, rights to secure copyrights, and all similar or dissimilar rights, whether now known or unknown, which the GRANTOR and/or the WRITER has or which he/she/they may become entitled to for all countries outside of the United States which the GRANTOR can convey, transfer or grant, and the company accepts the same:

.III. Subject to and upon the condition that the GRANTOR shall have duly and fully performed the several obligations on his/her/their part set forth herein, and provided the COMPANY shall have become the owner of the renewal(s) and extension(s) of copyright(s) for the United States, and all rights by law in and to such copyright(s), and the necessary and required transfer of all the interest of the GRANTOR shall have been evidenced by duly delivered instruments and duly recorded in the Office of the Register of Copyrights of the United States, that thereupon the COMPANY will pay to the GRANTOR, or in the event of his/her/their death, then to his/her/their estate, on account of royalties to accrue from the publication, sale and other uses by the COMPANY of the said musical composition(s) during the renewed or extended term of said copyright(s), a royalty of three (3¢) cents per each pianoforte copy of said composition(s) sold in the United States and Canada and paid for, and three (3¢) cents for each orchestra arrangement sold in the United States and Canada and paid for, and a sum equal to fifty (50%) percent of the net revenue actually realized by the COMPANY, from synchronization, electrical transcription, foreign publication, the use of said musical composition(s) by mechanical instruments, such as phonographs, music rolls, the use of the title(s), dramatization and literary uses; such royalties and further payments to be made thirty (30) days following each semi-annual period (January and July) during the renewed or extended term.

IV. It is agreed that the COMPANY shall not be obligated to pay, nor shall the GRANTOR be entitled to receive royalties on the following: Complimentary copies, copies sold but not paid for, copies sold and returned to the COMPANY, copies delivered on consignment but not sold, copies sold or given away as new issues or for advertising purposes, professional copies, copies included in folios or books or published in newspapers, magazines or other periodicals; medley or other arrangements of, or containing said works or any part thereof, arrangements for guitar, concertina or other musical instruments (except orchestra), whether the same shall be issued in sheet, folio, or book form or otherwise, all of which may be sold or otherwise disposed of by the COMPANY, its successors and assigns, free of all royalty and for its own benefit.

V. The COMPANY may, at any time, authorize or permit the use in any manner, by any person, firm or corporation, of the lyrics or words of said song(s) or musical composition(s), and the GRANTOR shall not be entitled to receive, nor will he/she/they make any claim for royalty or other payments therefor, except to the extent of fifty per cent (50%) of any amounts received by the COMPANY.

VI. Any sums paid or advanced to the GRANTOR upon the signing of this agreement or thereafter shall be repaid to the COMPANY from and out of the royalties and other payments to accrue to the GRANTOR, his/her/their legal representatives or assigns hereunder, and the latter hereby authorizes the COMPANY to deduct and retain the amount of such advance accordingly; except the above bonus.

VII. In the event that any of the compositions above specified shall have been written by the WRITER alone, both words and music, the GRANTOR shall receive the full amount of royalty specified herein; if, written with one or more additional writers, the GRANTOR shall receive his/her/their proportionate share, viz: one-half ( $\frac{1}{2}$ ) or one-



third ( $\frac{1}{3}$ ) or one-fourth ( $\frac{1}{4}$ ) of the amounts specified herein, as the case may be.

VIII. This instrument, and all its provisions, shall bind the heirs, executors, administrators and legal representatives of the GRANTOR, and inure to the benefit of and be enforceable by the successors, assigns and transferees of the COMPANY.

IX. The GRANTOR covenants and undertakes, without further consideration, except as hereinafter provided, to make, sign and ~~cause~~ to be filed the application for such renewal and extension, to cause said copyright(s) to be duly registered, and to do all other things necessary to completely effectuate the renewal and extension of said copyright(s), immediately upon the vesting of the right to such renewal and extension, or in due time in each instance and in the manner required by the existing copyright law of the United States, and/or amendments and new statutes in substitution, and hereby irrevocably appoints the COMPANY his/her/their Attorney in Fact, and in his/her/their name to perform each and every of the foregoing, and the GRANTOR further undertakes, immediately upon such renewal and extension having been effected as to each respective musical composition, to convey by written instrument duly acknowledged and delivered, the renewed and extended copyright(s) to said musical composition(s), and without cost to the COMPANY, to promptly sign, execute and deliver to the COMPANY such further documents which it may deem necessary to evidence the transfer of and thereby vest in the COMPANY the absolute ownership of each such renewed and extended copyright and all of the rights aforesaid, and hereby irrevocably appoints the COMPANY as his/her/their Attorney in Fact, to make and execute such assignment and to take any other proper or necessary steps or execute and deliver any other proper or necessary papers to fully protect the COMPANY's ownership of the copyright(s) and rights aforesaid.

X. The GRANTOR agrees that he/she/they will not assign, mortgage, or otherwise encumber this contract, or transfer to any person, firm or corporation, any sums that may be or become due hereunder without the written consent of the COMPANY first had and obtained and endorsed hereon.

XI. The COMPANY shall have the sole right to maintain any action or actions of any kind whatsoever to restrain any person, firm or corporation, from using in any manner the musical composition(s) or infringing the copyright(s) referred to herein, or to recover any damages that the COMPANY and/or the GRANTOR may sustain, as the result of the wrongful and unlawful use of the said musical composition(s), or infringement of copyright(s) and shall have the right to use the name of the GRANTOR in such action, and shall have the right to settle, adjust and compromise such action or actions, provided, however, that such suit or suits shall be instituted, brought, maintained and conducted at the joint cost and expense of the COMPANY and the GRANTOR, and any and all sums that may be received, obtained, collected or recovered in any such suit or suits whether by judgment or settlement or otherwise, shall be divided equally between the COMPANY and the GRANTOR, after deduction of all expenses of such litigation, including counsel fees.

XII. The GRANTOR, for himself/herself/themselves, his/her/their heirs, executors and administrators, covenant(s) and agree(s) to and with the COMPANY, its successors and assigns, at all times to warrant and defend the sale, assignment and transfer of said song(s) or musical composition(s), the words, music, title and copyright, and each of them, and each and every of the exclusive rights thereto and therein, against all and every person, firm or corporation whomsoever, and the GRANTOR will at all times full indemnify and save and keep harmless the COMPANY and its successors and assigns, of, from, and against any and all claims, demands, actions at law

or suits in equity, loss, damages, cost, charges, recoveries, judgments and penalties which may be obtained or recovered against, imposed upon or suffered or sustained by the COMPANY, and its successors and assigns, by reason of any violation or alleged or claimed violation of any copyright or of any musical or literary or any other rights, of any third party or parties, because of printing, publication, sale or any other use of said song(s) or musical composition(s), the words or music or title thereof, or the exercise of any of the rights hereby sold, granted and conveyed unto it. If any further assurance or covenant of title should be required or become necessary, the GRANTOR hereby obligates himself/herself/themselves to procure and furnish the same to the COMPANY at any time, upon its request, all without further cost or expense to it or its successors or assigns. The GRANTOR agrees that the COMPANY may on his/her/their behalf and its own behalf, defend, settle and adjust such suits and/or proceedings, and employ legal counsel for such purposes, and the GRANTOR will pay any and all costs, charges, fees and expenses, judgments, settlements, including fees of counsel that may have been paid or incurred in the defense or settlement of such suits or proceedings. Should the Company have paid any moneys whatsoever or incurred any obligations in connection with the matters referred to in this paragraph, it shall have the right to deduct the same from any sums that may be payable hereunder, and the GRANTOR will at all times upon demand make the same good to the COMPANY.

XIII. The GRANTOR warrants and represents that he/she/they has/have prior to the execution hereof, fully considered the value of the rights herein conveyed to the COMPANY, taking into account, amongst other things, the amounts previously derived from all sources from the said musical composition(s), and believes that the consideration, royalties and future payments herein provided, are fair and just payments for the rights herein conveyed.

XIV. If a claim is presented against the COMPANY, alleging that some other person is the owner, in whole or in part, of the rights herein conveyed by the GRANTOR, or the persons named in Paragraph XV hereof, the COMPANY shall mail written notice to the GRANTOR or said persons, and thereafter, until such claim has been adjudicated or settled, the COMPANY shall not be required to make the payments herein specified, or such part thereof as have been claimed, if the claim is of ownership of part of the rights conveyed, pending the outcome of such claims. If no suit be filed within one year after notice to the GRANTOR of the adverse claim, then payments previously withheld shall be made and payment shall continue. In the event suit is instituted, then upon such event, the COMPANY may from that time withhold payments, until the adjudication or settlement thereof. Payments made after said one year, or voluntarily made by the COMPANY prior thereto, or after the institution of action, shall be without prejudice to the rights of the COMPANY, in the event of a subsequent adverse adjudication.

XV. As a further consideration for the payments herein provided, and to induce the COMPANY to enter into this agreement MARIE WALLACE DESYLVA accept(s) and approve(s) this agreement and agree(s) that in the event the rights herein conveyed to the COMPANY shall vest in him/her/them, that he/she/they accept the terms and conditions as in this agreement set forth, and grant(s) to the COMPANY all the powers, rights and interest as set forth herein, upon such terms and conditions, and in such event, wherever the word "GRANTOR" appears herein, it shall be understood to include him/her/them.

RIDER ATTACHED

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

*Songs and percentages payable to B. G. DeSylva under  
Paragraph VII*

- 1925—ALABAMA BOUND— $\frac{1}{3}$
- 1927—BEHIND THE CLOUDS— $\frac{1}{2}$
- 1925—HEADIN' FOR LOUISVILLE— $\frac{1}{2}$
- 1925—IF YOU KNEW SUSIE— $\frac{1}{3}$
- 1925—IS ZAT SO— $\frac{1}{3}$
- 1925—MINE— $\frac{1}{2}$
- 1925—POLLY OF HOLLYWOOD— $\frac{1}{2}$
- 1924—ROSE MARIE— $\frac{1}{3}$
- 1925—SAVE YOUR SORROW— $\frac{1}{3}$
- 1925—WHAT DID I TELL YA— $\frac{1}{2}$
- 1926—WHY DO YOU SIT  
ON YOUR PATIO— $\frac{1}{2}$

As further consideration for the GRANTOR'S execution of this agreement it is understood and agreed that the royalties herein specified are to be paid commencing with the date of this agreement in place and instead of the royalties specified in the original royalty contracts.

SHAPIRO, BERNSTEIN & Co. INC.

By: ELLIOTT SHAPIRO  
vice pres

B. G. DeSYLVA

B. G. DeSylva

MARIE WALLACE DeSYLVA

Marie Wallace DeSylva

E

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA  
THE LIBRARY OF CONGRESS—Washington

The attached instrument was recorded in the assignment records of the Copyright Office,  
vol. 835, pages 189-190 on June 13, 1952

ARTHUR FISHER  
Register of Copyrights



## APPENDIX F

November 7, 1946.

Mr. B. G. DeSylva,  
C/o A. L. Berman, Esq.,  
551 Fifth Avenue,  
New York City.

Dear Sir:

This is to confirm our understanding with reference to the agreements between you and each of us and dated the 26th day of September, 1946 (which agreements hereinafter are referred to as the main agreements).

1. We jointly agree to pay to you the sum of \$2,000.00 at the beginning of each of ten consecutive fiscal years beginning with October 1, 1946. Said sum of \$2,000.00 shall be deemed an advance against all royalties accruing to you under the terms of both main agreements in the respective fiscal year and shall be deductible therefrom. If in any one fiscal year the royalties accruing to you under said agreements amount to more than \$2,000.00, the amount in excess of \$2,000.00 shall be withheld to make up any unearned balance remaining from previous years in said ten year period and, if there be none, said excess shall be applied as credit to the advance for the following year or years and we shall be obligated to pay to you as an advance in said following year or years an amount equal to the difference between said credit and \$2,000.00. If at the end of the ten year period aforesaid; there remains an unearned balance of \$20,000.00 in the aggregate, said balance shall be cancelled and shall not be returnable by you.

2. You agree to execute and to leave behind you a Last Will and Testament, which shall provide for an executor in the event your wife shall have predeceased you or shall cease to be your wife prior to your decease. You further agree that you will direct the executor of said

1-2

Last Will and Testament to renew all copyrights which shall come up for renewal after your death in the name of your executor and to assign each and all of such renewals of copyright to us, our successors and assigns, pursuant to and subject to the terms and conditions of the main agreements. In the event that you shall fail to leave behind you a valid Last Will and Testament providing for a corporate executor and containing the provision hereinbefore required or, in the event that such Will be left behind but shall not be probated, then in either such event we shall be relieved and released of and from any and all obligations to make the advances herein provided for.

3. In the event that for any reason whatsoever we shall not be vested by you or your wife or your executor or your next-of kin with your interests in the renewal copyrights of all the musical compositions covered by both main agreements and each and all of them, then in such event we and each of us shall be relieved and released of and from all liability to make the advances herein provided for.

Except as herein provided, the said agreements and each of them shall remain in full force and effect and unchanged.

If the foregoing correctly sets forth the understanding between us, kindly sign and return a copy of this letter.

Very truly yours,

CRAWFORD MUSIC CORPORATION

By MAX DREYFUS

T. B. HARMS COMPANY

By MAX DREYFUS

APPROVED AND AGREED TO:

B. G. DeSYLVA

(L.S.)

B. G. DeSylva

MARIE DeSYLVA

(L.S.)

Marie DeSylva

## APPENDIX G

October 31st, 1946.

Mr. B. G. DeSylva,  
c/o A. L. Berman, Esq.,  
551 Fifth Avenue,  
New York City.

Dear Sir:

This is to confirm our understanding.

The agreement between us dated the 26th day of September, 1946, (hereinafter referred to as the main agreement) is hereby modified by the addition of the following provisions.

1. We agree to pay you the sum of \$5,000.00 at the beginning of each of ten consecutive fiscal years, beginning with September 1, 1946. Said sum of \$5,000.00 shall be deemed an advance against all royalties accruing to you under the terms of the main agreement in the respective fiscal year and shall be deductible therefrom. If in any one fiscal year the royalties accruing to you amount to more than \$5,000.00, the amount in excess of \$5,000.00 shall be withheld to make up any unearned balance remaining from previous years in said ten year period and, if there be none, said excess shall be applied as credit to the advance for the following year or years and we shall be obligated to pay to you as an advance in said following year or years an amount equal to the difference between said credit and \$5,000.00. If at the end of the ten year period aforesaid, there remains an unearned balance of \$50,000.00 in the aggregate, said balance shall be cancelled and shall not be returnable by you.

2. You agree to execute and to leave behind you a Last Will and Testament, which shall provide for an executor, in the event your wife shall have predeceased you or shall

cease to be your wife prior to your decease. You further agree that you will direct the executor of said Last Will and Testament to renew all copyrights which shall come up for renewal after your death in the name of your executor and to assign each and all of such renewals of copyright to us, our successors and assigns, pursuant to and subject to the terms and conditions of the main agreement. In the event that you shall fail to leave behind you a valid Last Will and Testament providing for a corporate executor and containing the provision hereinbefore required or, in the event that such Will be left behind but shall not be probated, then in either such event we shall be relieved and released of and from any and all obligations to make the advances herein provided for.

3. In the event that for any reason whatsoever we shall not be vested by you or your wife or your executor or your next of kin with your interests in the renewal copyrights of all the musical compositions covered by the main agreement and each and all of them, then in such event we shall be relieved and released of and from all liability to make the advances herein provided for.

Except as herein amended, the said agreement shall remain in full force and effect.

If the foregoing correctly sets forth the understanding between us, kindly sign and return a copy of this letter.

Very truly yours,

MUSIC PUBLISHERS HOLDING CORPORATION  
By: HERMAN STARR

APPROVED:

B. G. DeSYLVA

B. G. DeSylva

MARIE DeSYLVA

Marie DeSylva

## APPENDIX H

FINK, LEVINthal & LAVERY  
 6253 Hollywood Boulevard  
 Los Angeles 28, California  
 Hollywood 4-5135

Attorneys for Petitioner

FILED

Dec 29 1955

HAROLD J. OSTLY,

County Clerk

By Ed Roberts C

Deputy

IN THE SUPERIOR COURT OF THE STATE  
 OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES.

In the Matter of the Estate and  
 Guardianship of

STEPHEN WILLIAM BALLENTINE,

also known as

STEPHEN WILLIAM MOSKOVITA,  
 a Minor.

No. 263,672

ORDER CONFIRMING SALE OF  
 PERSONAL PROPERTY AND  
 APPROVING CONTRACT WITH  
 ROSS & NICKEL, INC.

The Return of Sale of Personal Property and Petition of Marie Ballentine, as guardian of the estate and person of Stephen William Ballentine, also known as Stephen William Moskovita, a minor, for confirmation of the sale of that certain personal property hereinafter described, and for approval of that certain contract, a copy of which is hereinafter set forth, having come on regularly to be heard on the 29th day of December, 1955, in Department 4 of the above-entitled Court, the Honorable Burdette J. Daniels, Judge, presiding, and Fink, Levinthal and Lavery, by Max Fink, having appeared as counsel for the petitioner, and the Court having examined the said Re-



turn of Sale of Personal Property and Petition for Confirmation and for Approval of Contract, and the Court, having heard and considered the evidence with respect thereto and being fully advised in the premises, finds that due notice of the said Return of Sale of Personal Property and Petition for Confirmation and for Approval of Contract has been given as required by law; that all of the allegations of said petition are true; that said sale was legally made and fairly conducted; that notice of the time, place and terms of sale was duly given as required by law; and that the consideration to be paid therefor is the reasonable value of the property sold; and the Court, having examined the agreement between Stephen William Ballentine and Marie Ballentine, as guardian of the estate of the said Stephen William Ballentine, and Ross Jungnickel, Inc., a New York corporation, finds that said agreement is fair and equitable and for the best interests of the minor; and the Court finds that notice of the time and place of the hearing of the Return of Sale and Petition has been regularly given in the manner and for the period required by law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. That the sale so made of the personal property herein described as all of the right, title and interest of the minor in and to the renewal rights of copyrights obtained by BUDDY DESYLVA, also known as GEORGE G. DESYLVA, deceased, during his lifetime, with respect to all of the musical works, written or composed, in whole or in part, by the said BUDDY DESYLVA, also known as GEORGE G. DESYLVA, deceased, subject, however, to certain reservations as to accountings against co-owners and others, if any, and subject, further, to reservation of a portion of the performance rights, all as set forth in the said Agreement, (a copy of which is hereinafter set forth at length), for the considerations as set forth in the said

Agreement, and upon all of the terms and conditions therein, be and the same is hereby confirmed, and upon receipt of the considerations as set forth in said Agreement and compliance with the terms of the Agreement by said ROSS JUNGnickEL, Inc., the said MARIE BALLENTINE, as the Guardian of the above-named minor's estate, or any successor guardian or guardians, are directed to execute to, or for, said ROSS JUNGnickEL, Inc., all necessary documents and instruments required in said Agreement. The personal property so sold is described as follows:

"All of the right, title and interest of the minor in and to the renewal rights of copyrights obtained by BUDDY DESYLVA, also known as GEORGE G. DESYLVA, deceased, during his lifetime, with respect to all of the musical works written or composed, in whole or in part, by the said BUDDY DESYLVA, also known as GEORGE G. DESYLVA, deceased, subject, however, to certain reservations as to accountings against co-owners and others, if any, and subject, further, to reservation of a portion of the performance rights".

2. That the Agreement dated September 2, 1955, by and between STEPHEN WILLIAM BALLENTINE and MARIE BALLANTINE, as Guardian of the Estate of Stephen William Ballentine, and ROSS JUNGnickEL, Inc., a New York corporation, in words and figures, as follows:

#### "AGREEMENT

AGREEMENT made this 2nd day of September, 1955, by and between STEPHEN WILLIAM BALLENTINE (hereinafter referred to as "Ballentine") and MARIE BALLENTINE, as Guardian of the Estate of Stephen William Ballentine (hereinafter referred to as "the Guardian"), care of MAX FINK, 6253 Hollywood Boulevard, Hollywood 28, California, and ROSS JUNGnickEL, Inc., a New York cor-

poration, 1650 Broadway, New York 19, New York,  
(hereinafter referred to as "the Publisher")

WITNESSETH:

WHEREAS, the guardian has heretofore instituted on behalf of Ballentine, a certain action in the United States District Court for the Southern District of California against Marie DeSylva, widow of George G. DeSylva, professionally known as Buddy DeSylva, B. G. DeSylva and Bud DeSylva (hereinafter referred to as "Buddy DeSylva") for the purpose of asserting his claim that he is the son of said Buddy DeSylva, and as such is entitled to an interest in and to all of the United States renewal rights of copyrights in the works written by Buddy DeSylva; and

WHEREAS, the United States Court of Appeals for the Ninth Circuit, Case No. 13,880, on or about August 25, 1955 (which Publisher has read) rendered its decision directing the United States District Court to enter its judgment in favor of said Ballentine, proclaiming him to be the son of Buddy DeSylva under the Copyright Act, and entitled to an equal interest with the said Marie DeSylva in the renewal rights in the works of Buddy DeSylva after his death; and

WHEREAS, MAX FINK, CYRUS LEVINTHAL and LEON E. KENT (hereinafter jointly and severally referred to as "Attorneys") have heretofore acquired an interest in Ballentine's rights in the Works, and whereas said Attorneys will join in the conveyances herein provided, and

WHEREAS, the Publisher desired to obtain an assignment of all of Ballentine's (as well as Attorneys') right, title and interest in and to the musical compositions written in whole or in part by the said Buddy DeSylva, except as herein otherwise provided,

## IT IS AGREED:

## FIRST:

A. Ballantine hereby bargains, sells, transfers, assigns and sets over to the Publisher without reservation or limitation, except as hereinafter stated, all of his right, title and interest heretofore, now, or at any time or times hereafter known or which at any time or times heretofore or hereafter shall be, or have been acquired or possessed by him with respect to the United States renewal copyrights, including any and all claims and demands accrued or to accrue with respect to all of the musical works written or composed in whole or in part by Buddy DeSylva, and any and all rights with respect to foreign copyrights to the musical works. This said grant of all of Ballantine's right, title and interest includes any and all adaptations, arrangements, translations or versions thereof and all renewals and extensions of the copyrights in the said musical works for and during every period in respect of which copyrights may subsist and in any and all renewals and extensions thereof beyond the original terms thereof throughout the world, together with the right, power and authority to make any versions, omissions, additions, changes, dramatizations and translations of, in and to the aforementioned compositions and the title, words and music thereof, to the full extent of Ballantine's right, title and interest.

B. It is specifically understood that Ballantine is herein transferring, relinquishing and conveying only Ballantine's past, present and future rights with respect to the aforesaid works, and that Ballantine has not herein transferred, relinquished or conveyed any right or rights of any and all other persons, firms or corporations who have any right or interest in or to the said works.

## SECOND:

Ballantine hereby bargains, sells, transfers, assigns and sets over to the Publisher without reservation or limita-

tion, except as hereinafter stated, any and all rights, title or interest of Ballentine in and to the foreign copyrights to the musical works written or composed in whole or in part by Buddy DeSylva, to which he may have heretofore or hereafter be declared to hold an interest by reason of being the son of Buddy DeSylva.

THIRD:

Ballentine and the Guardian hereby represent and warrant that neither Ballentine nor the Guardian have heretofore sold, assigned, leased, licensed, transferred, encumbered, hypothecated or otherwise disposed of, in whole or in part, any portion of the rights in and to said musical compositions by Buddy DeSylva hereby bargained, sold, transferred, assigned and set over to Publisher pursuant to this agreement, except to Attorneys.

FOURTH:

In consideration of the terms hereof and the grants in this agreement contained, Publisher will pay or cause to be paid to Ballentine and Attorneys (as their respective interests hereafter appear) during all subsisting, renewals and/or extensions of the United States and foreign copyrights in said compositions, the following considerations, compensations, royalties and fees, as follows:

A. (i) The Publisher agrees to pay a sum equal to ten (10%) percent of the Publisher's share of its net receipts from the American Society of Composers, Authors and Publishers with respect to identifiable logged performances for profit with respect to all of the Buddy DeSylva works which are the subject of this agreement. As a non-returnable advance against the ten (10%) percent payments to be made by the Publisher under this paragraph FOURTH (A) (i), Publisher agrees to pay the sum of One Hundred Thousand (\$100,000.00)



Dollars, subject to the following terms and conditions:

(a) \$25,000.00, which said sum shall be payable upon the execution of this agreement by Ballentine's legally appointed guardian, pursuant to the order and with the approval of the Superior Court of the State of California, in and for the County of Los Angeles, in said Ballentine's Guardianship Estate, and execution of this agreement by Attorneys.

(b) \$25,000.00 on January 15, 1956.

(c) \$50,000.00 by monthly payments of \$1,400.00 commencing February 15, 1956, and a like sum upon the 15th day of each and every month thereafter until fully paid.

(ii) Anything to the contrary in this paragraph FOURTH (A) notwithstanding, it is specifically understood and agreed that the payments provided for in this paragraph FOURTH (A)(1)(b) and (c) shall not become due and payable until the decision of the United States Court of Appeals for the Ninth Circuit, in the case of *Marie Ballentine v. Marie DeSylva*, case No. 13,880, is ultimately confirmed by the happening of any of the following events:

(a) Marie DeSylva fails to seek a review in the Supreme Court of the United States within the time allotted therefor by law, making the present decision final;

(b) A petition for review to the United States Supreme Court by Marie DeSylva is denied; or

(c) The Supreme Court of the United States confirms in all respects the present decision of the United States Court of Appeals for the Ninth Circuit in the aforementioned *Ballentine v. DeSylva* case.

(iii) In the event Marie DeSylva petitions for re-hearing in the United States Court of Appeals, Ninth Circuit, in the matter of *Ballentine v. DeSylva*, supra, and such petition is granted, with the ultimate result in the Ninth Circuit of a reversal, in whole or in part, of the aforementioned present decision, the payments provided for by this paragraph FOURTH, except FOURTH (A)(i)(a), shall not be payable until such time as Ballentine has obtained a result of such litigation in the Circuit Court of Appeals or the Supreme Court of the United States favorable to him substantially as such result is expressed in the present decision of the Ninth Circuit Court of Appeals in the aforementioned case, with respect to his rights in the renewal of copyrights. It is the general intention of this agreement that no payments beyond the first \$25,000.00 payment provided for in this paragraph FOURTH shall be made unless and until the co-ownership rights of Ballentine, as stated in the present decision of the United States Court of Appeals, Ninth Circuit, shall be finally confirmed, without recourse.

(a) In the event the Circuit Court of Appeals, on a petition for re-hearing, reverses its present decision, Ballentine agrees to take all necessary steps for the purpose of obtaining a review of such decision in the Supreme Court of the United States.

(iv) In the event payments under this paragraph FOURTH are postponed due to the fact that neither of the three events contemplated by sub-paragraph (ii) (a), (b) and (c) occur prior to the payment due dates of any installment payments, and ultimately one of those three events does occur, the aforesaid postponed payments shall be deemed accumulative and upon the happening of any one of the three

said events, all accumulated payments shall forthwith be due and payable.

(v) Anything in this agreement to the contrary notwithstanding, it is specifically understood that in the event the Supreme Court of the United States should reverse the present decision of the United States Court of Appeals for the Ninth Circuit in any respect with reference to the case of *Ballentine v. DeSylva*, supra, or if a rehearing of such case is granted by the United States Court of Appeals, Ninth Circuit, resulting in a decision substantially different in any respect from the present decision with respect to Ballentine's rights in the renewal of copyrights; and such different decision is not thereafter reversed, either by appeal to the Supreme Court of the United States or by other rehearing in the Circuit Court of Appeals so that ultimately the rights of Ballentine shall be declared to be other than what they are under the present Court of Appeals' decision, the Publisher shall have no obligation to make any payments other than the first payment of \$25,000.00 as provided for in this paragraph FOURTH (A)(i)(a).

The said sum of \$25,000.00 hereinabove provided to be paid pursuant to the provisions of subdivision (i)(a) of division (A), of paragraph FOURTH shall be paid by Publisher, irrevocably, and Publisher shall not under any circumstances be entitled to the return thereof. In the event that the United States Court of Appeals should alter its decision, or the United States Supreme Court shall render a decision in the present cause to such an extent that it is determined that the minor child does not have the rights in the renewal of copyrights in said present decision described, then, and in such event, Publisher may, in its discretion, abandon this agreement, in which event Publisher shall have no further

duty with respect to the terms and provisions hereof; provided, however, that in the event that Publisher shall nevertheless determine to make use of such rights and privileges as may be finally determined to vest in Ballentine (although less than the rights described in the present decision of the Court), Publisher may do so, and its obligations to pay shall be reduced proportionately to the reduction in the quantum or extent of rights which Ballentine and Attorneys have the right to convey to Publisher pursuant to the terms hereof, and, in the event that the parties cannot agree upon the amount of such reduction, the same shall be submitted to arbitration in Los Angeles, California, in accordance with the rules of the American Arbitration Association and pursuant to the laws of the State of California.

B. In addition to the foregoing, Publisher shall pay or cause to be paid to Ballentine and Attorneys sums to be computed as follows:

(i) Six (6¢) cents for each regular piano copy and for each orchestration of said compositions sold by the Publisher, its affiliates, subsidiaries or assigns, paid for and not returned in the United States, plus,

(ii) Fifty (50%) percent of all net moneys received by the Publisher, its affiliates, subsidiaries and assigns, for its own use and benefit from licenses issued by it (1) for the recording on phonograph records, music rolls and electrical transcriptions for broadcasting; and (2) for the recording in synchronization with sound motion pictures; and (3) of any and all receipts of the Publisher, except as provided in Paragraph Fourth (A) (i), from any other source or right now known or which may hereafter come into existence for

which specific provision is not made in this instrument; provided, however, that Ballentine and Attorneys shall not be entitled to any share of the monies distributed to the Publisher by the American Society of Composers, Authors and Publishers, or any other performing rights society throughout the world which makes a distribution to writers either directly or through the American Society of Composers, Authors and Publishers of an amount which, in the aggregate, is at least equal to the aggregate amount distributed to publishers.

(iii) If a composition or any part thereof is included in any song book, song sheet, folio or similar publication issued by the Publisher, containing at least four (4) but not more than twenty-five (25) musical compositions, the royalty to be paid by the Publisher shall be an amount determined by dividing ten (10%) percent of the wholesale selling price (after trade discounts, if any) of the copies sold, among the total number of the Publisher's copyrighted musical compositions included in such publication. If such publication contains more than twenty-five (25) musical compositions, the said ten (10%) per cent shall be increased by an additional one-half ( $1\frac{1}{2}\%$ ) percent for each additional musical composition.

C. With respect to the sums hereinabove in said paragraph (B) hereof provided to be paid to Ballentine and Attorneys, it is specifically understood that Publisher will pay only a proportionate share thereof in proportion to the total number of writers and composers (irrespective of whether or not Publisher has acquired or may acquire their rights and interests therein) to whom Publisher may be required to account. Publisher shall be deemed to be required to account to such other writers and composers, within the meaning hereof, in the event



that Publisher shall be required to account to their assigns, publishers, heirs at law and others who may acquire an interest in the copyrights of the works and renewals thereof.

It is contemplated that the exact nature of Publisher's duty to account to others with respect to the foregoing may not be known until all periods of the statute of limitations for actions have expired, and it is therefore understood that Publisher shall have the right to withhold payment to Ballentine on any and all amounts payable pursuant to the provisions of paragraph (B) above, which, in the exercise of Publisher's reasonable discretion, Publisher may possibly be caused to pay to others until any and all actions with respect thereto have been terminated or other agreement is made with respect thereto, or until expiration of any and all periods of limitation with respect to the filing of actions regarding the same, whichever event may first occur. Any and all sums payable pursuant to the provisions of paragraph (B) above which are thus withheld by Publisher pursuant to the provisions of this paragraph shall be placed by Publisher in a special and separate trust account; provided, however, that Publisher is hereby authorized to at all times pay from such trust funds one-half ( $\frac{1}{2}$ ) of any and all expenses, including counsel fees, which Publisher may incur in connection with any and all proceedings occurring for the purpose of determining the relative rights and corresponding duties concerning the funds thus withheld. The foregoing shall not apply to the Publisher's share of any and all earnings, and shall only apply to funds which may eventually become payable pursuant to the provisions of paragraph (B) above. Publisher agrees that with respect to such portions of its income from said musical compositions not paid to Ballentine and Attorneys, Publisher will

indemnify and save Ballentine and Attorneys free and harmless of and from all actions, claims or demands of any persons, firms or corporations, including Marie DeSylva, based upon any claim of ownership in the copyrights of said compositions for an accounting with respect to said income not paid to Ballentine and Attorneys, and any and all reasonable counsel fees and costs expended by Ballentine and Attorneys in the defense of same (provided, however, that in the event of suit with respect thereto, Ballentine or Attorneys shall give notice to Publisher who shall thereupon have the right to assume the defense thereof).

Without in any manner limiting the foregoing, it is agreed that the royalties and compensation provided to be paid pursuant to the provisions of paragraph (B) above shall likewise be reduced by one-half ( $\frac{1}{2}$ ) with reference to all of said compositions, the renewal rights to which vest (reach their 28th year) during the lifetime of Marie DeSylva; provided, however, that in the event Publisher shall not be required to account to said Marie DeSylva, or her successors or assigns, then; and in such event, such reduction shall not be made and, provided further, that the actual reductions shall be limited to the net amount which Publisher may be required to thus pay, after taking into consideration offsets and cross accountings which may be had.

Anything in provision (B) above to the contrary notwithstanding, payment by the Publisher to all such other writers and composers of said compositions, *other than in instances when Publisher is required to account by operation of law*, shall be conditioned upon the Publisher having acquired or acquiring their respective interests in said compositions for the renewal period of copyright, the amount of all such payments to be the amount, if any, specified in the respective instruments under which such rights were or are acquired by the Publisher.

FIFTH:

Subject to the provisions of provision SIXTH, it is understood that the rights granted by Ballentine hereunder are in each case co-ownership rights and it is contemplated that the Publisher may seek accounting from the remaining co-owners of the copyrights which are the subject of this agreement. In the event of any recovery by Publisher under such accounting proceedings, Publisher shall pay to Ballentine and Attorneys a sum equal to fifty (50%) percent of its net receipts therefrom. Publisher shall be entitled to deduct, in computing such net receipts, all necessary costs of such proceedings, including but not limited to attorneys' fees and court costs. Publisher need not account under this paragraph with respect to any recovery made by it with reference to performing fees, except as hereinafter provided.

SIXTH:

Without in any manner limiting the foregoing, the parties agree that the performing rights will be licensed to ASCAP and other similar societies from time to time existing, and this agreement shall be subject to existing and future agreements between any of the parties hereto and such societies.

Anything contrary to the foregoing notwithstanding, it is specifically understood that Ballentine and Attorneys have reserved from the terms hereof any and all rights necessary to be conveyed by Ballentine or Attorneys to such performing rights organizations and societies, including ASCAP, in order and to the extent that Ballentine or Attorneys (or both) may enjoy the writer's share of performance income in accordance with the present custom in the industry and, provided further, that under any and all circumstances Publisher shall likewise have all rights necessary to the enjoyment of the publisher's share of such performance income, in accordance with the present custom of the industry.

Anything contrary to the foregoing notwithstanding, it is specifically understood that Ballentine and Attorneys have reserved from the terms of this agreement all demands and rights of recovery which Ballentine has or may hereafter have against said ASCAP and other performing rights societies, Marie DeSylva, and others, with respect to so-called authors' and composers' shares of the income from performance of the compositions, and have likewise reserved from the terms of this agreement the following:

A. All rights of accounting and recovery with respect to any and all income heretofore received by Marie DeSylva; and

B. All rights to accounting and recovery against Marie DeSylva with respect to income which said Marie DeSylva may hereafter receive or be entitled to receive by reason of agreements which she has entered into with publishers for the publication of compositions, but only with respect to copyrights which have been renewed since the date of death of said Buddy DeSylva and prior to September 2, 1955; provided, however, that if Marie DeSylva has not assigned the copyrights to such compositions to such publishers, then, and in such event, and with respect to income resulting from compositions for which the copyrights have not been assigned by Marie DeSylva to such publishers, one-half ( $\frac{1}{2}$ ) of the net (after legal and auditing expense) of such recovery shall be held by Ballentine and Attorneys for the benefit of Publisher and be paid over to the Publisher.

All payments provided to be made pursuant to the terms of this agreement by Publisher to Ballentine and Attorneys shall be made by Publisher and distributed to

the respective parties and in the respective percentages, as follows:

Ballentine	65% thereof;
Max Fink	21.32% thereof;
Cyrus Levinthal	9.13% thereof;
Leon E. Kent	4.55% thereof.

#### SEVENTH:

Ballentine and the Guardian hereby covenant, undertake and agree to make, execute and deliver any and all further instruments, documents and writings that may be requested by the Publisher, its successors and assigns, including an assignment in the form marked "EXHIBIT A" hereto attached, for the purpose of perfecting and confirming in the Publisher the rights and interests in all renewals and extensions of the copyrights, including subsisting copyrights, in said compositions, throughout the world vested by Ballentine in the Publisher under this agreement, and Ballentine hereby nominates and appoints the Publisher, and its each and every successor and assign, the true and lawful attorney of Ballentine to make, execute and deliver any and all such instruments, documents and writings in the name of Ballentine, and to renew and extend the copyrights in said compositions and to make applications therefor in the name of Ballentine, or the Publisher, or otherwise, as in every such case made and provided, for and on behalf of the Publisher, as the real party in interest therein. The said power is coupled with an interest and is irrevocable.

#### EIGHTH:

It is specifically understood and agreed that the Publisher will print copies of the compositions which are subject to this agreement only when in its absolute discretion it deems such printing to be advisable.



## NINTH:

The Publisher shall render to Ballentine and Attorneys hereafter, royalty statements accompanied by remittance of the amount due on or before each August 15th, covering the six (6) months ending December 31st. Ballentine or Attorneys may at any time, or from time to time, make written requests for a detailed royalty statement and the Publisher shall, within sixty (60) days, comply therewith. Such royalty statements shall set forth in detail the various items for which royalties are payable thereunder, and the amounts thereof, including but not limited to the number of copies sold and the number of uses made in each royalty category.

## TENTH:

It is specifically understood and agreed that all of the grants and assignments herein made and given are given subject to and upon condition that each and all of such accountings shall be truly and accurately rendered, and each and all such payments herein provided to be made shall be made at the time and in accordance with the provisions hereof, and, in the event of the failure on the part of Publisher, or any of its assigns, to properly pay and account in accordance with the terms hereof, and, in the event that such failure shall continue for a period of forty-five (45) days after written notice thereof given to Publisher, and its assigns (to the extent herein limited), then, and in such event, this agreement shall terminate and all rights of Publisher in and to the compositions and copyrights herein granted shall lapse and all of the same shall thereupon revert to Ballentine (and Attorneys, as their interests may appear), and Publisher (and its assigns) shall have no further right, title and interest therein. It is specifically understood that in the event that a dispute shall arise between Publisher and Ballentine or Attorneys with respect to any and all sums which Ballentine or Attorneys may claim in writing to be payable, then, and in such event, and pending the determination of such dispute,

Publisher may deposit the disputed funds in trust to be thus held in such separate trust account until the determination of such dispute by arbitration, in accordance with the rules of the American Arbitration Association and, in such event, the failure to pay such sum during the pendency of any such dispute shall not be cause for termination of this agreement as hereinabove provided. In this respect, Publisher agrees, for itself and its assigns, to execute any and all documents, instruments and agreements necessary to re-vest in Ballentine (and Attorneys, as their interest shall appear) all rights granted pursuant to the terms hereof, and Publisher does hereby irrevocably appoint Ballentine and Attorneys, and each of them, its attorney in fact to execute any and all such instruments, documents and agreements in the event Publisher shall fail so to do.

Without in any manner limiting the foregoing, it is specifically agreed that Publisher may not assign any right obtained by Publisher pursuant to the terms of this agreement, except upon conditions, as follows:

A. That Publisher shall give notice, in writing, to such assignee prior to the time of any such assignment of the pertinent terms and provisions hereof relating to the payment of any and all sums which may thereafter be or become due to Ballentine, and the requirements relative to rendition of accountings hereunder, and

B. Publisher shall deliver to Ballentine and Attorneys prior to any such assignment, notice, in writing, of Publisher's intention to assign, and the name and address of such assignee. In the event of voluntary or involuntary bankruptcy of Publisher, or in the event Publisher assigns all of its assets for the benefit of creditors, this contract shall lapse and terminate and all rights shall revert to Ballentine.

## ELEVENTH:

The Publisher shall, from time to time, upon written demand of Ballentine or Attorneys permit Ballentine, or Attorneys, or their representative, to inspect, at the place of business of the Publisher, all books, records and documents relating to uses and payments made by manufacturers of commercial phonograph records and music rolls, and Ballentine, or Attorneys, may appoint a Certified Public Accountant who shall at any time during usual business hours have access to all records of the Publisher relating to the subject compositions for the purpose of verifying royalty statements rendered, or which are delinquent under the terms hereof.

## TWELFTH:

Publisher shall, at all times and from time to time, have the right to obtain insurance upon the life of said minor child (Ballentine) in such amounts and with such companies as Publisher may from time to time determine, and Ballentine agrees that said child will at all reasonable times cooperate for the purpose of obtaining such insurance. In the event that Publisher shall obtain insurance on the life of Ballentine and shall thereafter determine to abandon the same, Publisher agrees to assign any right, title and interest of Publisher therein to Ballentine and Ballentine thereafter may retain such insurance, if any, for Ballentine's use and benefit; provided, however, if such insurance has a cash surrender value, or dividends and interest accrued and payable, Publisher shall not be obligated to assign such insurance unless concurrently Ballentine pays Publisher an amount equal to such cash surrender value, dividends and interest.

## THIRTEENTH:

A. In the event of litigation between the parties concerning their relative rights and duties pursuant to the terms of this agreement, and otherwise, then, and in such

event, the prevailing party in such litigation shall be entitled to recovery of reasonable counsel fees and court costs against the other party.

B. (i) Until otherwise notified in writing, any and all accountings, payments, notices and demands which Publisher may be required or may desire to give to Ballentine and Attorneys shall be given by registered mail, return receipt requested, addressed to Ballentine and Attorneys, care of Max Fink, 6253 Hollywood Boulevard, Hollywood 28, California, or to such other address as may from time to time be indicated by notice, in writing, given, as hereinabove provided, to Publisher.

(ii) Any notices or demands which Ballentine or Attorneys may desire to give to Publisher and its assigns (as herein limited) shall be given by addressing the same to Publisher by registered mail, return receipt requested, addressed to 1650 Broadway, New York 19, New York, or to such other address as Publisher may from time to time, by written notice given, as in the manner above required, to Ballentine and Attorneys.

(iii) Notice in each instance shall be deemed to be given five (5) days after deposit in the United States Mail.

#### FOURTEENTH:

Ballentine agrees to pursue Ballentine's remedies in the United States District Court to the extent reasonably necessary in order to effectuate the decision of said United States Court of Appeals.

#### FIFTEENTH:

This agreement shall be binding upon the execution hereof, subject only to approval of the Superior Court of the State of California, in and for the County of Los

Angeles, and Ballentine agrees, in good faith, to submit the same to the Court for its consideration and approval in the proceedings in said Court entitled, "In the Matter of the Estate and Guardianship of STEPHEN WILLIAM BALLENTINE, also known as STEPHEN WILLIAM MOSKOVITA, a Minor", and bearing No. 310665 in the records and files of said Court. In the event the Court shall approve this agreement, then, and in such event, the same shall be incorporated in the order of approval of the said Court. In the event the Court shall deny or otherwise refuse approval of this agreement, then, and in such event, the same shall be rendered null and void and of no effect. Without in any manner limiting the foregoing, it is specifically understood that for and in consideration of the execution of this agreement and the promise upon the part of Ballentine to submit the same to and for the approval of the said Court, Publisher shall be and remain bound by the terms hereof, unless or until the Court shall deny approval thereof, or otherwise fail to approve the same. Publisher represents that it has deposited the sum of Twenty Five Thousand (\$25,000.00) Dollars with the law firm of GANG, KOPP & TYRE, of Los Angeles, California, with directions to pay the same in accordance with the terms of this agreement immediately upon the approval of same, as hereinabove provided, by said Court.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

s/ MARIE BALLENTINE

Marie Ballentine, individually and on behalf of and as Guardian of the Estate of Stephen William Ballentine, a minor.

ROSS JUNGNIKKEL, INC.,

By: s/ JOACHIM JEAN ABERBACH  
V. Pres.



MAX FINK, CYRUS LEVINTHAL and LEON E. KENT, in the foregoing agreement; and herein jointly and severally referred to as "Attorneys", and in consideration of the foregoing, and in order to induce the said ROSS JUNG-NICKEL, INC., to enter into the said agreement, do hereby join in each and all of the terms of the foregoing agreement and do hereby grant to said ROSS JUNG-NICKEL, INC. each and every right, to the extent that Attorneys may have, hold or hereafter acquire the same, similar to and consistent with the rights hereinabove granted by "Ballentine" to Publisher, and do hereby reserve all rights similar to and consistent with the rights reserved by "Ballentine" in the foregoing agreement; and

Attorneys, and each of them, covenant, undertake and agree to make, execute and deliver any and all further instruments, documents and writings that may be requested by the Publisher, its successors and assigns, including assignments in the form marked "EXHIBIT A", hereto attached, for the purpose of perfecting and confirming in the Publisher the rights and interests in all renewals and extensions of the copyrights, including subsisting copyrights, in said compositions, throughout the world vested in the Publisher under this, as well as under the foregoing agreement, and Attorneys, and each of them, hereby nominate and appoint the Publisher and its each and every successor and assign the true and lawful attorney for Attorneys to make, execute and deliver any and all such instruments, documents and writings in the name of Attorneys to such extent as may be or become necessary or convenient to vest in the Publisher each and every right herein granted. The said power is coupled with an interest and is irrevocable.

s/ MAX FINK  
Max Fink

s/ CYRUS LEVINTHAL  
Cyrus Levinthal

s/ LEON E. KENT  
Leon E. Kent

State of California,  
County of Los Angeles—ss.:

On November 21, 1955, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Marie Bellentine, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

s/ CYRUS LEVINTHAL  
Notary Public in and for said  
County and State.

State of New York,  
County of New York—ss.:

On this 2nd day of September, 1955, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Joachim Jean Aberbach known to me to be the Vice-Pres. of the corporation that executed the within and foregoing instrument, and known to me to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

s/ LEWIS A. DREYER  
Notary Public in and for said County  
and State.

LEWIS A. DREYER  
Notary Public, State of New York  
No. 30-102345

Qualified in Nassau County  
Commission Expires March 30, 1959.

State of California,

County of Los Angeles—ss.:

On November 21, 1955, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Max Fink, Cyrus Levinthal and Leon E. Kent, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS My hand and official seal.

s/ SIDNEY R. SCHWARTZ

Notary Public in and for said County  
and State.

My Commission Expires Jan. 24, 1959.

#### ASSIGNMENT

The undersigned, Stephen William Ballentine, Marie Ballentine, as guardian of the Estate of Stephen William Ballentine, Marie Ballentine, Max Fink, Cyrus Levinthal and Leon E. Kent, all in care of Max Fink, 6253 Hollywood Boulevard, Hollywood, California (hereinafter referred to jointly and severally as "the Assignors"), hereby sell, assign and transfer to Ross Jungnickel, Inc., a New York corporation, located at 1650 Broadway, New York, N. Y., all their right, title and interest, including a y and all claims and demands accrued or to accrue, with respect to the copyright or rights derived under copyright of musical compositions written in whole or in part by George G. DeSylva, also known as Buddy DeSylva and Bud DeSylva, subject to and in accordance with the terms and conditions of a certain agreement between the Assignors and Ross Jungnickel, Inc., dated September 2, 1955.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 1955.

Witness \_\_\_\_\_ Stephen William Ballentine

Witness \_\_\_\_\_ Marie Ballentine, as guardian of the estate of Stephen William Ballentine

Witness \_\_\_\_\_ Marie Ballentine

Witness \_\_\_\_\_ Max Fink

Witness \_\_\_\_\_ Cyrus Levinthal

Witness \_\_\_\_\_ Leon E. Kent

(Acknowledgment).

### EXHIBIT "A"

is hereby approved and the execution of said Agreement by said Guardian is hereby approved, and said Guardian, and any successor guardian, or guardians, is hereby directed to comply with the terms and provisions thereof.

3. That said Marie Ballentine give additional bond in the sum of Fifteen Thousand Dollars (\$15,000.00).

The Clerk is directed to enter this decree.

Dated this 29th day of December, 1955.

DANIELS  
Judge of the Superior Court.

MAR 8 1956

HAROLD B. WILLEY, Clerk

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1955

No. 529

MARIE DESYLVA,

*Petitioner,*

*vs.*

MARIE BALLENTINE, as Guardian of the Estate of  
Stephen William Ballentine,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF FOR MOTION PICTURE ASSOCIATION OF  
AMERICA, INC. AS AMICUS CURIAE**

MORRIS EBENSTEIN,  
321 West 44th Street,  
New York 36, N. Y.

*Attorney for Motion Picture Association  
of America, Inc.*

FRANK E. ROSENFELT,  
1540 Broadway,  
New York, New York

STANLEY ROTHENBERG,  
729 Seventh Avenue,  
New York, New York

MELVILLE NIMMER,  
5451 Marathon Street,  
Hollywood 38, Calif.

*Of Counsel*



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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1955

MARIE DESYLVA,

*Petitioner,*

*vs.*

MARIE BALLENTINE, as Guardian of the  
Estate of Stephen William Ballentine,  
*Respondent.*

No. 529

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF FOR MOTION PICTURE ASSOCIATION OF  
AMERICA, INC.**

**OPINIONS BELOW.**

The opinion of the District Court (R. 29-32) is not reported. The majority opinion (R. 47-67) of the United States Court of Appeals for the Ninth Circuit is reported at 226 F. 2d 623 and dissenting opinion (R. 67-71) of Mr. Justice Fee therein is reported at 226 F. 2d 634.

**JURISDICTION**

The judgment of the district court in favor of defendant and against plaintiff, was entered on April 29, 1953 (R. 34). The judgment of the United States Court of Appeals, Ninth

Circuit, reversing the judgment of the district court, was entered August 25, 1955 (R. 72). No petition for rehearing of said cause in that court was filed. Petitioner petitioned for certiorari, the petition being No. 529, and such petition was granted January 9, 1956. (R. 73).

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

### QUESTIONS PRESENTED

1. When an author is not living, is his widow entitled to renewals of copyrights in his works accruing during her lifetime, and his children entitled thereto only if there is no widow living when rights to renew copyrights in his works accrue?

2. When the Copyright Act, 17 U. S. C. 24, grants the renewal copyright to "children" does it include illegitimates?

### STATUTE INVOLVED

The statutory provision involved in this case is section 24 of the Copyright Act, Act of July 30, 1947, C. 391, 61 Stat. 652, 17 U. S. C. 24, as set forth below:

Sec. 24. Duration; Renewal and Extension.—The copyright secured by this title shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise

than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children, be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

### STATEMENT OF THE CASE

George G. DeSylva, who died July 11, 1950, was an author and composer of musical works, many of which were copyrighted during the last 28 years of his life. Therefore, since his death, a number of copyrights came up for renewal and were renewed by Marie DeSylva, his widow

and petitioner in this action, and other copyrights will, in the future, come up for renewal (R. 4, 5, 12).

Marie Ballentine, as the mother, and guardian of the estate, of Stephen William Ballentine, filed a complaint in the District Court on August 8, 1952, contending that Stephen William Ballentine, an acknowledged illegitimate child of George G. DeSylva, was equally entitled with Marie DeSylva, widow of George G. DeSylva, to the renewals and extensions of said copyrights and prayed for a declaratory judgment and for an accounting (R. 3-7).

Petitioner, on January 7, 1953, filed her answer therein, contending that in accordance with the provisions of 17 U. S. C. 24 relating to the extensions and renewals of copyrights, she, as the widow of George G. DeSylva, is the sole owner of the renewals and extensions of copyrights in the late George G. DeSylva's works accruing during her lifetime and that the said Stephen William Ballentine is not a child of the deceased, George G. DeSylva, within the meaning of 17 U. S. C. 24.

In a judgment entered April 29, 1953, the District Court held that in accordance with 17 U. S. C. 24 so long as petitioner, Marie DeSylva, is alive, she, as the widow of George G. DeSylva, is the sole owner of renewals and extensions of copyrights accruing during her lifetime in works by George G. DeSylva and that respondent has no right to an accounting as a result of renewals and extensions of copyrights obtained by petitioner, nor will the respondent have any right to an accounting as to any renewals accruing in the future so long as Marie DeSylva is alive (R. 33, 34).

Respondent appealed from this judgment (R. 35).

In its findings of fact and conclusions of law filed in support of this judgment, the District Court found that

the respondent herein is "a child of George G. DeSylva, the deceased, within the meaning of the statutes of the United States relating to the renewal of copyrights" (R. 29-32). Petitioner appealed from this conclusion (R. 35).

Both appeals were decided against petitioner in the decision of the United States Court of Appeals for the Ninth Circuit, (R. 47-67) Judge Fee dissenting on jurisdictional grounds (R. 67-71).

### SUMMARY

Where an author dies and leaves surviving a widow and children, the widow is entitled to the renewals accruing during her lifetime, and the children are entitled only to the renewal copyrights which accrue after the death of the widow. The principal support for the validity of this proposition can be found in the plain meaning of the language of the renewal provision of the copyright statute itself. Additionally, the legislative history of the renewal section of the copyrights statute confirms that the widow has the exclusive right to the renewal copyright. The principal users of copyrights have relied upon the soundness of this statement of the law which is to be found in the cases and text-books.

The term "children", in the renewal provision of the copyright statute does not include illegitimates. Common law does not accord recognition to illegitimate children and this doctrine has been adopted with respect to federal statutes unless a different intention is clearly manifested.

Because of competitive factors and the extensive investment involved in the production of a motion picture, producers of motion pictures must obtain a grant of exclusive motion picture rights. However, by virtue of the



decision of the Court of Appeals for the Ninth Circuit, it would be almost impossible for them to be certain that a grant of exclusive rights for the renewal period had been secured since in clearing such rights there is no procedure available for ascertaining the identity of, or procuring a grant of rights from, illegitimate children.

Should this Court hold that children have a contingent interest in the renewal copyright together with the contingent widow the ability of an author to market a literary property in the final years of its original term of copyright will be seriously affected. The renewal provisions of the copyright statute should be construed from the viewpoint of what is most advantageous for the author while he is still alive. To grant the widow exclusive priority with respect to the renewal copyright would have this result.

## ARGUMENTS

### I.

**THE WIDOW OF A DECEDENT AUTHOR IS ENTITLED TO THE RENEWALS OF COPYRIGHTS IN HIS WORKS ACCRUING DURING HER LIFETIME, AND ONLY IF THERE IS NO WIDOW LIVING WHEN THE RENEWAL COPYRIGHTS ACCRUE ARE HIS CHILDREN ENTITLED THERETO.**

A. The intention of Congress is sought primarily in the language used. Where this language expresses an intention reasonably intelligible and plain, it must be accepted without resort to construction or conjecture. *Thompson v. U. S.*, 246 U. S. 547 (1918). In commenting upon the renewal provisions of the copyright statute shortly after its enactment, Assistant Attorney General Fowler stated:

"Each of these sections is specific in its terms and leaves but little or no room for construction."  
28 Op. Attys. Gen. 162, 164 (1910).

The Court must take notice of the fundamental and unalterable fact that this section of the statute employs the word "or" and not the word "and" in providing that "the widow, widower or children" shall be entitled to the renewal and extension of the copyright.

A federal statute with an analogous clause containing both "and" and "or" in a dispositive clause was considered in *Cutting v. Cutting*, 6 Fed. 259 (C. C., D. Oreg., 1881).

In that case under Section 4 of the Donation Act, it was provided that where the donees thereunder were married persons, "and either shall have died before the patent issued, *the survivor and children or heirs of the deceased* shall be entitled to the share or interest of the deceased in equal proportions . . ." (p. 261) (emphasis added).

The donee died and left surviving him a widow and children. The Court ruled that the widow shared the interest of the deceased donee equally with the children. With respect to the phrase "or heirs" the Court stated:

"The heirs whoever they may be, can only take in default of children. The act substitutes them for children in case there are none of the latter."  
(p. 267).

The Court thus construed "and" as "and" and "or" as "or", and found its guide for the determination of the proportionate shares to be taken by each beneficiary in the statute itself.

If the word "or" is construed in the conjunctive so that the widow and children are entitled as a class to the renewal copyright, then resort to statutory construction would become necessary to determine the proportionate shares that each would take.

Furthermore, as shown in the briefs of the petitioner and the *amicus curiae* Music Publishers Protective Association,<sup>3</sup> the legislative history of this section of the copyright statute confirms that the widow has the exclusive right to the renewal copyrights, accruing during her lifetime.

B. Although the Courts have not been called upon to decide the precise question in issue they have nevertheless been called upon to construe the renewal provisions and in so doing they have referred to the order of succession with respect to the persons entitled to the renewal right. In *Silverman v. Sunrise*, 273 Fed. 909, 911 (CCA 2, 1921) the Court clearly stated: "The purpose of the statutory renewal provisions is to give to the persons enumerated in the order of their enumeration a new right or estate, not growing legally out of the original copyright property . . ." (emphasis added). It should be noted that the reference in the aforesaid quotation is to persons rather than classes, and to the order in which such persons are enumerated.

In *Fisher v. Witmark*, 318 U. S. 643, 646 (1943), this Court stated with respect to two authors who died before the first day of the twenty-eighth year of the copyright: "Ball and Olcott were no longer living at the time, and under Section 23 of the Act their interests in the renewal passed to their widows." It should be noted that Ball and Olcott both died leaving children.<sup>1</sup> The fact that this Court referred to renewal interests as passing to the widows of Ball and Olcott without considering whether any children of either author were living suggests an

<sup>1</sup>New York Times: May 5, 1927, p. 27, col. 4; May 12, 1927, p. 27, col. 2; March 19, 1932, p. 15, col. 1; April 6, 1932, p. 10, col. 5.

acceptance by this Court of the principle that the widow has priority with respect to the renewal copyrights.

The *Hitmark* case is in accord with the opinion of the Assistant Attorney General referred to above which states (at pages 164-165):

"Each of these sections is specific in its terms and leaves but little or no room for construction. . . The very fact that each of these sections enumerates with such particularity the *persons* who may exercise the privilege of securing copyrights and having them renewed, *and the order in which the right vests*, shows that the persons enumerated are exclusive of all others, and that it was not the purpose of Congress to confer the right upon any person or persons not therein specifically mentioned" (emphasis added).

C. The following significant textbook authorities have been unanimous in construing Section 24 as giving the renewal copyright to the widow, and to the children only if she predeceases them:

(a) AMERICAN COPYRIGHT LAW (1917) by Arthur Weil (at p. 365). This was the first standard treatise on the Act of 1909 and is still generally regarded as authority of the first order.

(b) AN OUTLINE OF COPYRIGHT LAW (1925) by Richard C. DeWolf (at p. 66). Mr. DeWolf is a recognized copyright authority who at the time of the enactment of the 1909 statute was an attorney in the Copyright Office.

(c) MUSICAL COPYRIGHT (1932) by Alfred M. Shafter (at p. 136). This work is of particular interest since it is the only reference work devoted entirely to the subject of this litigation, musical compositions.

(d) A MANUAL OF COPYRIGHT PRACTICE (1945) by Margaret Nicholson (at pp. 195-197). This work is a standard guide in the publishing industry and consequently merits the attention of this Court in determining the prevailing practice among publishers with respect to renewals.

(e) RISKS AND RIGHTS IN PUBLISHING, TELEVISION, RADIO, MOTION PICTURES, ADVERTISING AND THE THEATRE (1952) by Samuel Spring (at p. 94). Mr. Spring is a distinguished copyright attorney whose experience with motion pictures dates back to the silent picture era.

Thus the available legal literature clearly indicates that the renewal copyright has been regarded as vesting in the

<sup>2</sup>Additional authorities in support of the above-stated position are CORPUS JURIS, COPYRIGHT AND LITERARY PROPERTY § 239 (Hale, 1917); AM. JURIS., LITERARY PROPERTY AND COPYRIGHT § 32 (1941); JACOBS, OUTLINE OF THEATRE LAW 27 (1949) and WARNER, RADIO AND TELEVISION RIGHTS 260 (1953). The remaining treatises published after the 1870 Act did not report the order in which the renewal devolves, other than, in a few cases, to repeat the statutory language. LAW, COPYRIGHT AND PATENT LAWS OF THE UNITED STATES, 1790-1870 (3d ed. 1870); MORGAN, LAW OF LITERATURE (1875); SPALDING, LAW OF COPYRIGHT (1878); DRONE ON COPYRIGHT (1879); BUMP, LAW OF PATENTS, TRADEMARKS, LABELS AND COPYRIGHTS (2d ed. 1884); MACGILLIVRAY, LAW OF COPYRIGHT (1902); BOWKER, COPYRIGHT—ITS HISTORY AND ITS LAW (1912); ELFRETH, PATENTS, COPYRIGHTS, AND TRADE MARKS (1913); FROHLICH AND SCHWARTZ, LAW OF MOTION PICTURES (1918); GRAHAM, PATENTS, TRADEMARKS AND COPYRIGHTS (2d ed. 1921); AMDUR, COPYRIGHT LAW AND PRACTICE (1936); MARCHETTI, LAW OF STAGE, SCREEN, AND RADIO (1936); WITTENBERG, PROTECTION AND MARKETING OF LITERARY PROPERTY (1937); LADAS, INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY (1938); SOCOLOW, THE LAW OF RADIO BROADCASTING (1939); SHAFTER, MUSICAL COPYRIGHT (2d ed. 1939); BALL, LAW OF COPYRIGHT AND LITERARY PROPERTY (1944); COPINGER, LAW OF COPYRIGHT (8th ed. 1948); HOWELL, COPYRIGHT LAW (3d ed. 1952); ROTHENBERG, COPYRIGHT AND PUBLIC PERFORMANCE OF MUSIC (1954). Thus it is clear that the renewal succession language was deemed so plain and unambiguous as not to require any comment thereon.



widow during her lifetime and only if there is no widow living when the renewal copyrights accrue are the children entitled thereto.

D. A further indication that Congress intended the widow to take the renewal rights accruing during her lifetime to the exclusion of the children and that said right should go to the children only in the absence of a widow, is borne out by other Federal statutes dealing with death benefits to widows and children. Such statutes establish that it is usual for Congress to grant benefits to the widow in preference to the children and that such benefits go to the children only if there is no surviving widow. See The Congress, 2 U. S. C. 36a, 38a; Army, 10 U. S. C. 903; Pensions, Bonuses and Veterans' Relief, 38 U. S. C. 96, 191, 661, 691d, 739A(2); Public Lands, 43 U. S. C. 278; Pay and Allowances, 37 U. S. C. 362. Conversely when Congress did wish to have the children share the benefits with the widow, its intentions were manifested in clear and unambiguous language with the proportionate shares of the widow and children carefully specified. See Pay and Allowances, 37 U. S. C. 35(a)(2)(i) and (b)(i). Thus an examination of prior Congressional enactments indicates that Congress generally grants rights to surviving widows in preference to children; and that in those instances where it did not intend to grant widows such a preference the proportionate shares granted concurrently to the widow and children were not left to conjecture. Furthermore, if the children are to share in renewal copyrights with the widow, the children would not merely receive an equal share but would in fact receive preferential treatment. The preferential treatment arises because during the life of the widow the children would share the renewal copyrights with her, and after her death would be entitled, exclusively, to the renewal copyrights thereafter accruing.